

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID O. GAUDETTE and BRANDON G. NUNES

Appeal No. 2001-2614
Application 09/506,576

ON BRIEF

Before PATE, STAAB, and NASE, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 6 and 14 through 25. These are the only claims remaining in the application.

The claimed invention is directed to an adjustable support for a video game controller. The support consists of a controller mounting platform, a mechanical support frame which adjustably mounts the controller mounting platform, and a means for positioning the home video game to the platform.

The claimed subject matter may be further understood with reference to the appealed claims appended to appellants' brief.

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The references of record relied upon as evidence of obviousness are:

Johnson	3,115,849	Dec. 31, 1963
Boyer et al. (Boyer)	5,713,548	Feb. 3, 1998
Houle	5,829,745	Nov. 3, 1998

REJECTIONS

Claims 1, 14 through 18 and 25 stand rejected under 35 U.S.C. § 103 as unpatentable over Houle in view of Johnson.

Claims 2 through 6 and 19 through 24 stand rejected under 35 U.S.C. § 103 as unpatentable over Houle in view of Johnson and Boyer.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellants and the examiner. As a result of this review, we have determined that the applied prior art does not establish the prima facie obviousness of the claims on appeal. Accordingly, the rejections on appeal are reversed. We also enter a new rejection pursuant to our authority under 37 CFR 1.196(b) of claims 1, 2 and 6.

Houle discloses a video game control unit with a support wherein the base section or support includes a base plate 12, a pedestal 14, and a tray 16. Pedestal 14 is interposed between the tray and the baseplate, and is designed so that an operator's

thighs are placed on the baseplate 12 with the tray 16 in lap position. Houle is used in this manner whether the device is used by an operator sitting in a chair or by an operator on the floor. Johnson on the other hand shows a table for a projector with the typical tripod as the leg portions and an upright post 10 supporting the table or support 11. In our view there is no suggestion or teaching for the combination of the tripod and support of Johnson with the baseplate pedestal and tray of Houle. It is apparent any combination of the tripod and support of Johnson with Houle would destroy the ability in Houle for the thighs of the operator to be interposed between baseplate 12 and tray 16. For this reason, the combination of references would not have suggested the claimed subject matter to one of ordinary skill in the art at the time the invention was made.

We have further considered the disclosure of Boyer, but we find therein no teaching or suggestion that would alleviate the problems of the combination of Houle and Johnson.

Pursuant to 37 CFR 1.196(b) we enter the following rejection.

Claims 1, 2 and 6 are rejected under 35 U.S.C. § 102 as anticipated by Boyer. As an initial matter we construe the means-plus-function limitation of claim 1 on appeal. The "means

for positioning" is construed as a hook and loop fastener secured to the top surface of the platform (specification page 2, line 4), an elastic or inelastic belt to hold the control mechanism to the platform (specification page 2, line 6-7), an adaptor secured to the platform (specification page 2, line 13), an adaptor and a belt (specification page 2, line 17) and equivalents. Turning to figure 11 and column 5 of the Boyer patent, Boyer discloses an airplane fold-down tray 34. In this instance, an airplane fold-down tray denotes a structure which has a mounting platform that may be adjusted from a horizontal use position to a near vertical stowed position. Boyer further discloses a means for positioning that includes a belt formed of hook and loop material. While we are not of the view that claim 1 actually requires the supported structure to be a home video game, we note that such games may be played on the multipurpose computer disclosed. Furthermore, the doctrine of claim differentiation convinces us that claim 1 does not include the video game controller. See claim 14. As can be seen from the above analysis, claims 1, 2 and 6 lack novelty over the invention of figure 11 of Boyer.

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THE SUMMARY

The rejections of claims 1 through 6 and 14 through 25 have been reversed.

A new rejection of claims 1, 2 and 6 under 35 U.S.C. § 102 has been entered pursuant to 37 CFR 1.196(b).

This decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b) (amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. & Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that, "A new ground of rejection shall not be considered final for purposes of judicial review."

37 CFR § 1.196(b) also provides that the appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of proceedings (§ 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

REVERSED 1.196(b)

WILLIAM F. PATE III)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

WFP:pgg

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